IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 275 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MODI SOMALAL MOHANLAL

Versus

BABALDAS JIVRAM

Appearance:

1. Civil Revision Application No. 275 of 2004

MR BG JANI for Petitioner No. 1

MR MD RANA for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 29/12/2004

ORAL JUDGEMENT

1. By consent of learned Advocates appearing for the parties, this Revision Application is taken up for final hearing today.

2. This Revision Application under Section 29(2) of the Bombay Rent Act arises out of a judgment and decree passed in Regular Civil Appeal No.19 of 2004 on 7th August,2004. The said appeal arose out of a judgment and decree passed by learned Joint Civil Judge (J.D.) Patan in Regular Civil Suit No.21 of 1994 dated 21st April,2004.

3. The petitioner was the original defendant no.2 in the suit and respondent no.3 was the original defendant no.1 in the suit. The respondent nos.1 and 2 were the plaintiffs. For sake of convenience, respondent nos.1 and 2 would be referred as "the plaintiffs", respondent no.3 as "defendant no.1" and the petitioner as "defendant no.2" in this judgment.

4. The suit was preferred by the plaintiff-landlord for recovery of arrears of rent and possession of the suit property on grounds of arrears of rent, subletting and permanent construction without the permission of the landlord. It was the case of the plaintiff in the plaint that the property was originally let out to father of defendant no.1 and subsequently, defendant no.2 was inducted in the said property. The case of the defendant no.2 was two fold; (i) that he is the direct tenant since 1986 as rent was paid by him directly to the plaintiff landlord and (ii) that the property is not of the ownership of the plaintiff. The defendant no.1 in his written statement, however, admitted the fact of having inducted defendant no.2 but, under different colour.

5. The Trial Court, after considering the pleadings of both the sides and evidence led by the parties, passed a decree of eviction on grounds of arrears of rent and subletting.

6. Aggrieved by the said judgment and decree, defendant no.2 preferred the Regular Civil Appeal. Defendant no.1 chose not to prefer an appeal.

7. The Appellate Court, after considering the rival side contentions, dismissed the appeal and confirmed the judgment and decree of eviction passed by the Trial Court. Aggrieved by the said judgment and decree of the Appellate Court, present Revision Application is

preferred by original defendant no.2 - the alleged sub-tenant.

8. Heard learned Advocates Mr.Jani and Mr.Rana for the parties.

9. Learned Advocate Mr.Jani appearing for the revisionist submitted that the Courts below have not considered the fact that the defendant no.2 has been paying rent directly to the plaintiffs since 1986 and, therefore, he cannot be branded as a sub-tenant by the plaintiffs because by conduct the plaintiffs have accepted him as a tenant. The defendant no.2 was not inducted clandestinely or without the knowledge of the plaintiffs. However, as regards the arrears of rent, Mr.Jani submitted that entire arrears of rent has been deposited by the petitioner as per the order and his possession is protected up-till now. Mr.Jani submitted that the property in question abuts to the main road the cabin is on the road and, therefore, the plaintiff could not have been filed the suit.

10. Learned Advocate Mr.Rana appearing for the respondents submitted that the defendant - petitioner has approached the Court with contradictory pleas from the very beginning. On one hand, he claims to be a direct tenant of the plaintiff and on other hand, he disputes the ownership of the property in question of the plaintiff. Mr.Rana relying on the decision in the case of Nanduben Dayalji Vs. Bhatia Ranchhoddas Lalji & Another (1977 GLR 140) submitted that the tenant would loose protection of Section 12(1) the moment title of the landlord is disputed by him. He also submitted that the defendant no.2 only had preferred the appeal and not the main tenant - defendant no.1 and as such, in absence of defendant no.1, appeal could not have been favourably considered by the Appellate Court nor this Revision can be considered by this Court. He, therefore, submitted that the Revision Application may be dismissed.

11. What emerges from the contentions raised before this Court without any dispute is that the petitioner was the defendant no.2 before the Trial Court, who was alleged to be a sub-tenant. In his written statement, he has taken two contradictory pleas; one of being a direct tenant of the plaintiff and second, of the plaintiff-landlord being not the owner of the property in question. In other words, he has disputed the title of the landlord and in view of the provisions of the Rent Act and the interpretation given to it by the Division Bench of this Court in case of Nanduben Dayalji (supra),

the petitioner would loose the protection under Section 12(1) of the Rent Act even if he is accepted as a direct tenant. It is also worth a note that original defendant no.1 - the main tenant has admitted in his written statement that he had inducted defendant no.2 in the suit premises.

12. It is also to be noted that after the decree was passed by the Trial Court, it is only defendant no.2 who challenges the same in appeal. Defendant no.1 chooses not to challenge that judgment and decree and prefers no appeal. The appeal came to be dismissed however.

13. The facts as they stand today are that the petitioner has lost before both the Courts below. There are concurrent findings of fact by both the Courts. No illegality or an error of fact or law is indicated, no jurisdictional error is indicated nor found by this Court and, therefore, in the opinion of this Court, this Revision Application must fail and stands dismissed with no order as to costs. Rule discharged. Interim relief would stands vacated.

14. A request is made by learned Advocate Mr.Jani for granting some time to the revisionist to vacate the premises, to which learned Advocate Mr.Rana has raised strong objection and rightly so, in the opinion of this Court. Once this Court has come to a conclusion that there is no substance in the Revision Application, direct effect is that the revisionist has lost consistently before three Courts in a raw and, therefore, protection cannot be granted further. Request is turned down.

(A.L.Dave,J.)

(vipul)